

**Before the
Commission on Common Ownership Communities
Montgomery County, Maryland**

In the Matter of

Donna Marie & Stephen W. Neufville
8104 Cambourne Court
Gaithersburg, MD 20877,

Complainants,

v.

Greenfield Commons Condominium
c/o Jeffrey Van Grack, Esquire
Suite 380
3 Bethesda Metro
Bethesda, MD 20814,

Respondent.

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**Montgomery County
Consumer Affairs**

JUN 26 2001

Received

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Consumer Affairs**

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Case No 497-O
June 27, 2001

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

On September 3, 2000, Donna Marie and Stephen W. Neufville, owners of 19617-J Gunners Branch Road, Germantown, Maryland (Complainants) filed a complaint with the Office of Common Ownership Communities, in which they alleged that Greenfield Common Condominium (Respondent or Condominium) was requiring that they repay the Condominium the amount of the insurance coverage deductible for the cost of repairs to their unit following a fire. The amount of the deductible is \$5000. The complainants also asked that the Condominium apologize to them and inform all unit owners in the Condominium of changes in insurance carrier and deductible limits.

On behalf of the Respondent, counsel argued that the Condominium documents, which include language allocating liability for the cost of repairs for which insurance proceeds are insufficient to the homeowners, required the homeowners to repay the Condominium the amount

of the deductible.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e) on January 3, 2001, and the Commission accepted jurisdiction. The matter was scheduled for public hearing on April 18, 2001 and a public hearing was conducted on that date. Counsel for respondent submitted a written statement arguing that a January 27, 1999 letter from Richard E. Israel, Maryland Assistant Attorney General addressed to State Senator Leonard H. Teitelbaum, a July 20, 2000 letter from Nikki Baines Trella, Legal Officer in the Office of the Maryland Secretary of State to an unknown addressee, and a letter transmitting a report of a Condominium Insurance Workgroup from Susan Elson, Chief Legal Officer in the Office of the Maryland Secretary of State to State Delegate Michael E. Busch dated January 15, 1999 all discussing the interpretation of the Maryland statutory language found in the Real Property article at section 11-114 should not be considered by the Panel in coming to a decision in this case. Complainants were given 15 days to offer a reply to this submission. On May 1, 2001, Mr. and Mrs. Neufville submitted a rebuttal and attached a letter addressed to Mrs. Neufville from Nikki Baines Trella, Legal Officer in the Office of the Secretary of State dated April 27, 2001 and attaching a copy of the January 27, 1999 letter from Richard E. Israel, Assistant Attorney General to Senator Teitelbaum, of which the Panel had previously received a copy. The Panel also received a letter from the attorney for the Respondent objecting to the inclusion in the record of the documents submitted by the Complainants. The letter from the Complainants and the attachments were included in the record. The record in this matter was officially closed on May 14, 2001.

Findings of Fact

It was agreed at the hearing that Complainants own 19617-J Gunners Branch Road, Germantown, MD, which is a unit in the Greenfield Common Condominium community; that this unit was damaged in a fire which started within the unit and occurred on January 19, 2000; that the Condominium master insurance policy covers the damage resulting from the fire and that the necessary repairs have been made at the expense of the Condominium; and that the deductible on the Condominium master policy was \$5000, which the community is seeking reimbursement from the Complainants.

Further testimony which was not disputed indicated that there had been a fire in this community in March of 1998 following which the community was advised that the master insurance policy would not be renewed. When another insurance company was identified to cover the community, the policy that was available had an increased deductible amount of \$5000 instead of the earlier \$1000 deductible. The 1998 fire had begun in the common area rather than in an individual unit.

Alan Siefert, the manager for Greenfield Commons Condominium for the past 12 years, testified that in the 1998 fire the community paid the full expense of reconstruction because the fire started in a common area. In this case, he testified, the community is seeking to collect the

deductible from the unit owner because the fire began in a condominium unit. The language in the By-laws at Article XIII, Section 2, regarding reconstruction and repair in cases where the insurance proceeds are insufficient says that the repair or reconstruction of the common elements will be a common expense and the reconstruction of condominium units will be the unit owners' expense. The By-law provision does not allocate liability based on the source of the damage or where the fire started, but on where the damage was done.

The Articles of Incorporation of Greenfield Commons Condominium, Inc. are dated December 6, 1982 and were filed with the Maryland State Department of Assessments and Taxation on December 10, 1982. The Greenfield Commons Declaration of Condominium is dated November 23, 1982 and was filed with the Montgomery County Clerk's Office on November 24, 1982 as were the By-laws.

Discussion

Section 11-114 of the Real Property Article of the Maryland Annotated Code requires the council of unit owners of a condominium community to maintain, to the extent reasonably available, property insurance on the common elements and units, exclusive of improvements and betterments installed by unit owners, insuring against those risks of direct physical loss commonly insured against, in amounts determined by the council of unit owners but not less than amounts specified in the declaration or bylaws.

The Greenfield Commons By-laws at Article XII, Section 1. (a) require that the Board of Directors obtain and maintain, to the extent reasonably available, casualty and property damage insurance in an amount equal to full replacement value. Further at Article XIII, the By-laws require that in the event of damage or destruction by fire the same shall be promptly repaired or reconstructed in substantial conformity with the original plans and specifications with the proceeds of insurance available for that purpose. If the proceeds of insurance are not sufficient to repair the damage, then the repair of the common elements will be at common expense and the repair of any condominium unit will be at the expense of the homeowner. This is neither what was reflected in the testimony at the hearing nor what is required by the statute.

Section 11-114(g)(2) of the Real Property Article states that the cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. Section 11-142(a) of the Real Property Article provides that the statute is applicable to all condominiums. There is a distinction between condominiums established before July 1, 1982 and those established after that date which might be interpreted to give effect to a variation from the statute in condominium documents in those condominiums established before July 1, 1982. However, that is not the situation in this case.

During the most recent session of the Maryland General Assembly both houses passed House Bill 938, which amends Section 11-114. The bill had not been signed by the Governor on the date of the hearing, and in any case would not affect the outcome of this case. The measure

will allow condominium communities to establish in their bylaws the right to assess up to \$1000 of a property insurance deductible against the owner of a unit in which the cause of insurable damage originated. The legislation was signed on May 18, 2001 and will become effective on October 1, 2001. *See* 2001 Md. Laws 694.

Conclusions of Law

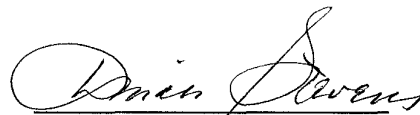
To the extent that the By-laws of the Greenfield Commons Condominium purport to differ from the state law, state law prevails (Md. Code Ann. Real Prop. sec. 11-124(e)). Greenfield Commons Condominium was established after July 1, 1982 and the statute that requires the cost of repair or replacement in excess of insurance proceeds and reserves to be a common expense is best read to require the community to cover the insurance policy deductible. This conclusion is confirmed by the correspondence in the record from the offices of the Maryland Attorney General and Secretary of State, though those documents are not relied upon in reaching the conclusion. The fact that the language of the statute which requires that costs in excess of insurance proceeds and the By-laws provision "[i]n the event that the proceeds of insurance are not sufficient to repair" mirror each other confirms that the two relate to the same lapse in funds, that is the deductible. The By-laws require that the insurance coverage be, to the extent reasonably available, full replacement value. There was testimony that as a result of the previous fire the deductible was increased but there was no testimony indicating that coverage was not full replacement value.

Order

Greenfield Commons Condominium may not assess the value of the deductible against or otherwise charge the Neufvilles for repair of the damage done by fire to their unit, exclusive of any improvements or betterments installed by the owners.

The foregoing was concurred in by panel members Gaffigan, Subin and Stevens.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals.



Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities